



**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

WRIT - A No. - 9881 of 2023

Sudeep Shukla And 45 Others

.....Petitioner(s)

Versus

State Of U.P Thru. Prin. Secy. Deptt. Medical
Health Family Welfare Civil Govt. Lko. And 2
Others

.....Respondent(s)

Counsel for Petitioner(s) : Alok Mishra
Counsel for Respondent(s) : C.S.C., Gaurav Mehrotra, Utsav
Mishra

Court No. - 17

HON'BLE RAJEEV SINGH, J.

1. Counter affidavit filed by Shri Utsav Mishra, learned counsel for respondent no. 3 is taken on record.
2. Heard learned counsel for the petitioners and learned Standing Counsel for the respondent Nos. 1 and 2 and Shri Utsav Mishra, learned counsel for the respondent no.3.
3. Learned counsel for the petitioners submitted that petitioners were engaged on the post of Optometrist on contractual basis under the National Health Mission Scheme. It is further submitted that the petitioners are still working on the contract basis. Thereafter, Writ Petition No.(A) No.8621 of 2023 was filed for grant of reference to the petitioners in the appointment of Optometrist. The petition was disposed of vide order dated 06.11.2023 by setting aside the order dated 27.09.2023 which was passed by the Principal Secretary, Department of Medical Health and Family Welfare, Civil Secretariat, Lucknow with a direction to revisit the matter and decide the petitioner's representation dated 22.08.2023 afresh. Again the representation was rejected vide order dated 21.11.2023 with the observation that as the details of the work of the petitioners are mentioned in Paragraph No.4 of the writ petition. The representation was rejected with the observation that in

Assistant Optometrist Service Rules, 1993 there is no provision of preference or age relaxation. Thereafter, writ petition was allowed vide order dated 16.01.2024 with the direction to the authority to consider the candidature of the petitioners in the light of the judgment passed in the case of **Seema Singh and others vs. State of U.P. and others** after granting the benefit of past services rendered by the petitioners as an Optometrist on contractual basis under National Mission Health within a period of four weeks. The aforesaid order was challenged by the State Government in Special Appeal No.21 of 2026. The aforesaid appeal was allowed on 10.02.2026. The order dated 10.02.2026 passed by the Division Bench is as under:-

" 1. Heard.

2. This is an appeal under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952 against the judgment and order dated 16.01.2024 passed in Writ-A No.9881 of 2023 [Sudeep Shukla & Ors. vs. State of U.P. & Ors.].

3. After hearing the parties, although we had passed certain orders in this case putting queries to learned counsel for the State, ultimately, when we go through the impugned judgment, we find that learned Single Judge while allowing the writ petition has directed the appellant-opposite parties to consider candidature of the respondents-petitioners in the light of its judgment and the judgment rendered in Writ Petition No.190 (S/S) of 2013 'Seema Singh & Ors. vs. State of U.P. & Ors.' dated 01.02.2013 after granting weightage on account of past services rendered by the petitioners as an Optometrist on contractual basis for the last more than ten years under National Health Mission within a period of four weeks. However, we do not find any discussion as to the entitlement of the respondents-petitioners to such weightage preceding issuance of such a direction. As regards judgment in Seema Singh (supra), on being confronted, learned counsel for the respondents-petitioners fairly submitted that in Seema Singh (supra), weightage was not given but preference was given to contractual employees working as Auxiliary Midwives /Health Worker (Female) in the same department. If at all weightage is to be given, then, some reasons had to be assigned by learned Single Judge as to what was the basis for issuing such a direction. Of course, the question which we had posed earlier in this appeal as recorded in our orders would be relevant in this context but they have not been considered by the learned Single Judge. Therefore, we see no reason as to why we should consider these issues without the learned Single Judge having considered the same.

4. At this stage, Sri Alok Mishra, learned counsel for the respondents-petitioners says that in Seema Singh (supra), preference was given to contractual employees, therefore, at least that benefit should be extended. However, we did not find the learned Single Judge to have given this benefit to the respondents-

petitioners as such if this is the claim, whether the main or the alternative claim, then, even this would, first of all, have to be considered by learned Single Judge, which has not been done.

5. We, accordingly, set aside the impugned judgment. Consequently, writ petition bearing Writ-A No.9881 of 2023 [Sudeep Shukla & Ors. vs. State of U.P. & Ors.] shall stand restored to its original number and shall be listed before the learned Single Judge on 19.02.2026 amongst first ten cases of the day. We request the learned Single Judge to kindly consider and dispose of the writ petition at the earliest keeping in mind the observations made hereinabove and also considering that the selection in question is already underway and a select list has been sent to the Government for appointment. We, however, make it clear that so far as age relaxation is concerned, if the same has been considered for grant to the concerned as ordered, the same shall remain unaffected by our order.

6. Accordingly, the appeal is allowed in the aforesaid terms."

4. It is informed by the learned counsel for respondent no.3 UP Subordinate Service Selection Commission that the selection process has already been concluded in accordance with the requisition that there was no provision for preference therefore, no preference was given to the petitioners for their past services.

5. The aforesaid fact is also admitted in the counter affidavit filed by the respondent no.3 and submitted that the result has already been forwarded to the State Government for issuance of appointment.

6. Learned Additional Chief Standing Counsel requested for some time to file counter affidavit.

7. Accordingly, prayer is allowed.

8. List this case on 21.04.2026 at 02:30 p.m.

9. As the petitioners are still working therefore, respondent nos.1 and 2 are hereby. directed not to issue any appointment letter in pursuance of the selection in question till the next date of listing.

10. In case, counter affidavit is not filed, then appropriate order shall be passed on the next date.

April 10, 2026

PS

(Rajeev Singh,J.)